

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1923.

No. 4044.

No. —, SPECIAL CALENDAR.

41

RICHARD FRIZZELL, ALIAS RAYMOND FRIZZELL, ALIAS
HENRY VERNON ANDERSON, PLAINTIFF IN ERROR,

vs.

UNITED STATES.

IN ERROR TO THE JUVENILE COURT OF THE DISTRICT OF
COLUMBIA.

FILED SEPTEMBER 24, 1923.

PRINTED DECEMBER 3, 1923.

Court of Appeals of the District of Columbia.

OCTOBER TERM, 1923.

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No. —, SPECIAL CALENDAR.

RICHARD FRIZZELL, ALIAS RAYMOND FRIZZELL, ALIAS
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IN ERROR TO THE JUVENILE COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia.

No. 4044.

RICHARD FRIZZELL, &C., Plaintiff in Error,

vs.

UNITED STATES.

1 UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable Kathryn Sellers,
Judge of the Juvenile Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Juvenile Court, before you, between United States, plaintiff, and Richard Frizzell, alias Raymond Frizzell, alias Henry Vernon Anderson, defendant, Information Nos. 33,879, 33,886, 33,882 and 33,883, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Constantine J. Smyth, Chief Justice of the said Court of Appeals, the 10th day of September, in the year of our Lord one thousand nine hundred and twenty-three.

[Seal of Court of Appeals, District of Columbia.]

HENRY W. HODGES,
*Clerk of the Court of Appeals
of the District of Columbia.*

Allowed by
CHARLES H. ROBB,
*Associate Justice of the Court of
Appeals of the District of Columbia.*

2 In the Juvenile Court of the District of Columbia.

September 24th, 1923.

I hereby certify under the Seal of this Court that the attached is a true and complete copy of the record and proceedings had in this Court in cases Nos. 33879, 33881, 33882, and 33883, United States vs. Richard Frizzell.

[Seal of the Juvenile Court of the District of Columbia]

PERRY WATZMAN,
Deputy Clerk, Juvenile Court, D. C.

3 Filed Sep. 13, 1923. Clerk Juvenile Court, D. C.

September 12th, 1923.

Mr. Waldo Burnside,
Clerk Juvenile Court,
Washington, D. C.

MY DEAR MR. BURNSIDE:

I have received notice that the Court of Appeals, has granted the writ of error in the case of Richard Frizzell, cases No. 33879, No. 33881, No. 33882, No. 33883.

In getting up the record please insert the enclosed assignment of errors and also the following: 1. The docket entries in each case showing the sentence etc. etc. 2nd. A copy of each of the informations. 3rd. A copy of the motion to quash and a copy of the demurrer. You need not file a copy of the motions to each information but simply certify that each information was demurred to for the same reasons as above stated.

Any suggestions or assistance I can render don't hesitate to call upon me.

Very truly yours,
(Signed)

ALEX. R. MULLOWNY.

I hereby certify under the Seal of this Court that the foregoing is a true copy of letter containing designation of record in the cases of Richard Frizzell, Nos. 33879, 33881, 33882, and 33883, received from the attorney for defendant by the Clerk of the Juvenile Court.

[Seal of the Juvenile Court of the District of Columbia.]

PERRY WATZMAN,
Deputy Clerk, Juvenile Court, D. C.

[Endorsed:] No-. 33879, 33881, 33882, 33883. U. S. vs. Richard Frizzell. Designation of Record by Defendant. A. R. Mulloyny, Atty. for deft. Filed Sep. 13, 1923. Clerk Juvenile Court, D. C.

4 Filed Sep. 15, 1923. Clerk Juvenile Court, D. C.

September 15, 1923.

Clerk Juvenile Court, D. C.:

Frizzell vs. U. S. Original Docket, No. 886. In the Court of Appeals for the District of Columbia.

Designation of Record for the United States.

In the above entitled cause, please insert in the record for the Court of Appeals, a certified copy of the docket entries of the Criminal Court of the Supreme Court of the District of Columbia, wherein the appellant was sentenced to confinement while this cause was pending in your Court.

(Signed)

L. B. PERKINS,
Assistant Corporation Counsel, D. C.

I hereby certify under the Seal of this Court that the foregoing is a true copy of designation of record in the above-entitled cause received by the Clerk of the Juvenile Court from the Assistant Corporation Counsel, D. C., on behalf of the United States.

[Seal of the Juvenile Court of the District of Columbia.]

PERRY WATZMAN,
Deputy Clerk, Juvenile Court, D. C.

[Endorsed:] No-. 33879, 33881, 33882, 33883. U. S. vs. Richard Frizzell. Designation of Record by the United States. L. B. Perkins, Asst. Corporation Counsel, D. C. Filed Sep. 15, 1923. Clerk Juvenile Court, D. C.

5 In the Juvenile Court of the District of Columbia.

Information No. 33879.

" " 33881.

" " 33882.

" " 33883.

UNITED STATES

VS. .

RICHARD FRIZZELL, alias RAYMOND FRIZZELL, alias HENRY VERNON ANDERSON.

Assignment of Errors.

The defendant assigns the following as errors committed by the Court in the above entitled cause:

1. In overruling the motion to quash to each information.
2. In overruling the demurrer to each of the informations.

3. In sentencing the defendant after some twenty terms of the court had expired.

(Signed)

ALEX. R. MULLOWNY,
Attorney for Defendant.

A true copy: teste:

[Seal of the Juvenile Court of the District of Columbia.]

PERRY WATZMAN,
Deputy Clerk Juvenile Court, D. C.

6 In the Juvenile Court of the District of Columbia, November Term, 1921.

No. 33879.

UNITED STATES

vs.

RICHARD FRIZZELL, alias RAYMOND FRIZZELL, alias HENRY VERNON ANDERSON.

Information for Contributory Delinquency.

Atty. for Deft., A. R. Mulloyny.

Proceedings.

1921.

Nov. 30. Information filed.

Dec. 2. Case called and arraignment waived. Plea not guilty entered and case continued to Dec. 5, 1921, at 1 p. m. Bond fixed at \$1,000.00. See #33880.

“ 5. Case called and plea not guilty withdrawn. Demurrer and motion to quash filed by attorney for defendant. Case continued to Dec. 12, 1921, 1 p. m.

“ 12. Motion denied and demurrer overruled. Attorney for defendant states defendant will stand on demurrer. Defendant states that his name is Richard Frizzell. Case continued subject to call. See #33880.

1923.

July 23. Set for July 26, 1923.

“ 26. After hearing adjudged guilty and sentenced to serve three months in jail. Committed.

Aug. 2. In order to give defendant right to apply for writ of error sentence of July 26, 1923, set aside. Defendant sentenced to serve three months in jail D. C. Notice of intention to apply for writ of error given by attorney for defendant, bond fixed at \$250.00. Bond of \$1,000.00 to apply in this case and in Nos. 33881, 33882 and 33883, Chas. D. Hood security given by defendant and filed in this case. Defendant released.

Aug. 6. Time for signing bill of exceptions extended to Aug. 20, 1923.

“ 20. Bill of exceptions signed and filed.

Sept. 10. Order of Court of Appeals of this date received directing that record and proceedings be certified to that court within 15 days.

“ 13. Assignment of errors and designation of record filed by attorney for defendant.

“ 15. Designation of record filed by Assistant Corporation Counsel.

September 18th, 1923.

I hereby certify under the Seal of this Court, that the foregoing is a true copy of the record of the proceedings had in the Juvenile Court in the above-entitled case.

[Seal of the Juvenile Court of the District of Columbia.]

PERRY WATZMAN,
Deputy Clerk Juvenile Court, District of Columbia.

7 Filed Nov. 30, 1921. Clerk Juvenile Court, D. C.

DISTRICT OF COLUMBIA, ss:

In the Juvenile Court of the District of Columbia, November Term,
A. D. 1921.

Francis H. Stephens, Esq., Corporation Counsel in and for the District of Columbia, who, for the said United States, prosecutes in this behalf, by Lewis B. Perkins, Esq., his Assistant, comes here into Court, at the District aforesaid, on the thirtieth day of November in the year of our Lord one thousand nine hundred and twenty-one in this said Term, and for the said United States, gives the Court here to understand and be informed, on the oath of one Donald V. Murphy that one Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson, late of the District aforesaid, on or about the fifteenth day of November in the year of our Lord one thousand nine hundred and twenty-one, with force and arms, at the District aforesaid, and within the jurisdiction of this Court, did then and there unlawfully contribute to the delinquency of Francis Fowler, a minor under the age of seventeen years, in that the said Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson, did then and there persuade, encourage, entice and decoy the said Francis Fowler to commit a misdemeanor, to-wit, the commission of an indecent and immoral act; the said Francis Fowler having heretofore been convicted more than once of having violated the laws of the United States, or the laws, ordinances or regulations in force in the District of Columbia, said convictions being in the Juvenile Court of the District of Columbia as follows:

Nov. 22, 1921, Dis. Conduct; Case No. 33830;

Nov. 22, 1921, Incurability; Case No. 33838,

against the form of the statute in such case made and provided, and against the peace and Government of the United States of America.

Whereupon, the said Corporation Counsel, who, in this behalf, prosecutes for the said United States, in manner and form as aforesaid, prays the consideration of the Court here in the premises, and that due proceedings may be had against the said Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson, in this behalf to make him answer to the said United States touching and concerning the premises aforesaid.

FRANCIS H. STEPHENS,

Corporation Counsel in and for the District of Columbia,

(Signed)

By LEWIS B. PERKINS,

His said Assistant.

Personally appeared Donald V. Murphy before me this thirtieth day of November, A. D. 1921, and being duly sworn according to law doth declare and say that the facts as set forth in the foregoing information are true.

[Seal of the Juvenile Court of the District of Columbia.]

(Signed)

PERCY WATZMAN,

Deputy Clerk Juvenile Court of the District of Columbia.

A true copy: Teste:

PERCY WATZMAN,

Deputy Clerk, Juvenile Court, D. C.

Sept. 19, 1923.

[Endorsed:] No. 33879. United States vs. Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson. 23/W. Contributory delinquency. Witnesses: N. N. Nelson, James L. Rochford, #3. Francis Fowler, 632 Maryland Ave., S. W. Donald V. Murphy, #3. Filed Nov. 30, 1921. Clerk, Juvenile Court, D. C. Jail.

8 In the Juvenile Court of the District of Columbia, November
Term, 1921.

No. 33881.

UNITED STATES

VS.

RICHARD FRIZZELL, alias RAYMOND FRIZZELL, alias HENRY VERNON
ANDERSON.

Information for Contributory Delinquency.

Atty. for Deft., A. R. Mulloony.

Proceedings.

1921.

Nov. 30. Information filed.

Dec. 2. Case called. Arraignment waived and plea not guilty entered. Case continued to Dec. 5, 1921, at 1 p. m. bond fixed at \$1,000.00, see #33880.

" 5. Case called and plea not guilty withdrawn. Demurrer and motion to quash filed by attorney for the defendant. Case continued to Dec. 12, 1921, 1 p. m.

" 12. Motion denied and demurrer overruled. Attorney for defendant states defendant will stand on demurrer. Defendant states that his name is Richard Frizzell. Case continued subject to call. See #33880.

1923.

July 23. Case set for July 26, 1923.

" 26. Adjudged guilty. Sentenced to serve three months in jail, sentence to be served at expiration of sentence in case #33879.

Aug. 2. In order to give defendant right to apply for writ of error sentence of July 26, 1923, set aside. Defendant sentenced to serve three months in D. C. jail, sentence to be served at expiration of sentence in case No. 33879. Notice of intention to apply for writ of error given by attorney for defendant, bond fixed at \$250.00, bond of \$1,000.00 to apply in four cases, Chas. D. Hood, surety, given by defendant, and filed in case #33879.

" 6. Time for signing bill of exceptions extended to Aug. 20, 1923.

" 20. Bill of exceptions signed and filed.

Sept. 10. Order of Court of Appeals of this date received directing that record and proceedings be certified to that court within 15 days.

" 13. Assignment of errors and designation of record filed by attorney for defendant.

" 15. Designation of record filed by Assistant Corporation Counsel.

I hereby certify under the Seal of this Court, that the foregoing is a true copy of the record of the proceedings had in the Juvenile Court in the above-entitled case. Sept. 18, 1923.

[Seal of the Juvenile Court of the District of Columbia.]

PERCY WATZMAN,
Deputy Clerk Juvenile Court, District of Columbia.

9 Filed Nov. 30, 1921. Clerk Juvenile Court, D. C.

DISTRICT OF COLUMBIA, ss:

In the Juvenile Court of the District of Columbia, November Term,
A. D. 1921.

Francis H. Stephens, Esq., Corporation Counsel in and for the District of Columbia, who, for the said United States, prosecutes in this behalf, by Lewis B. Perkins, Esq., his Assistant, comes here into Court, at the District aforesaid, on the thirtieth day of November in the year of our Lord one thousand nine hundred and twenty-one in this said Term, and for the said United States, gives the Court here to understand and be informed, on the oath of one Donald V. Murphy that one Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson late of the District aforesaid, on the sixteenth day of September in the year of our Lord one thousand nine hundred and twenty-one, with force and arms, at the District aforesaid, and within the jurisdiction of this Court, did then and there unlawfully contribute to the delinquency of Tripoli Scafone, a minor under the age of seventeen years, in that the said Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson, did then and there persuade, encourage, entice and decoy the said Tripoli Scafone, to commit a misdemeanor, to-wit, the commission of an indecent and immoral act; the said Tripoli Scafone having heretofore been convicted more than once of having violated the laws of the United States, or the laws, ordinances or regulations in force in the District of Columbia, said convictions being in the Juvenile Court of the District of Columbia as follows:

July 9, 1920,	Taking Property another;	Case No. 30936;
Nov. 22, 1921,	Dist. Conduct;	" " 33836;
Nov. 22, 1921,	" "	" " 33835;
Nov. 22, 1921,	" "	" " 33837,

against the form of the statute in such case made and provided, and against the peace and Government of the United States of America.

Whereupon, the said Corporation Counsel, who, in this behalf, prosecutes for the said United States, in manner and form as aforesaid, prays the consideration of the Court here in the premises, and that due proceedings may be had against the said Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson in this behalf

to make him answer to the said United States touching and concerning the premises aforesaid.

FRANCIS H. STEPHENS,
Corporation Counsel in and for the District of Columbia,
(Signed) By LEWIS B. PERKINS,
His said Assistant.

Personally appeared Donald V. Murphy before me this thirtieth day of November, A. D. 1921, and being duly sworn according to law doth declare and say that the facts as set forth in the foregoing information are true.

(Seal of the Juvenile Court of the District of Columbia.)

(Signed) PERCY WATZMAN,
Deputy Clerk Juvenile Court of the District of Columbia.

A True Copy: Teste:
PERCY WATZMAN,
Deputy Clerk, Juvenile Court, D. C.

Sept. 19th, 1923.

[Endorsed:] No. 33881. United States vs. Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson. 23/W. Contributory Delinquency. Witnesses: Donald V. Murphy, #3. James L. Rochford, #3. H. N. Nelson, #3. Tripoli Scafone, 323 D St., S. W. D. Filed Nov. 30, 1921. Clerk Juvenile Court, D. C. Jail.

10 In the Juvenile Court of the District of Columbia, November Term, 1921.

No. 33882.

UNITED STATES

VS.

RICHARD FRIZZELL, alias RAYMOND FRIZZELL, alias HENRY VERNON ANDERSON.

Information for Contributory Delinquency.

Atty. for Deft., A. R. Mallowny.

Proceedings.

1921.

Nov. 30. Information filed.

Dec. 2. Case called. Arraignment waived and plea not guilty entered. Case continued to Dec. 5, 1921, at 1 p. m. bond fixed at \$1,000.00 see #33880.

Dec. 5. Case called and plea not guilty withdrawn. Demurrer and motion to quash filed by attorney for defendant. Case continued to Dec. 12, 1921, 1 p. m.

" 12. Motion denied and demurrer overruled, attorney for defendant states that defendant will stand on demurrer. Defendant states that his name is Richard Frizzell. Case continued subject to call, see #33880.

1923.

July 23. Set for July 26, 1923.

" 26. Adjudged guilty and sentenced to serve three months in jail, sentence to be served at expiration of sentence in case #33881.

Aug. 2. In order to give defendant right to apply for writ of error, sentence of July 26, 1923, set aside. Defendant sentenced to serve three months in D. C. jail, sentence to be served at expiration of sentence in case #33881. Notice of intention to apply for writ of error given by attorney for defendant, bond fixed at \$250.00 bond of \$1,000.00 to apply in four cases Chas. D. Hood, surety, given by defendant and filed in case No. 33879.

" 6. Time for signing bill of exceptions extended to Aug. 20, 1923.

" 20. Bill of exceptions signed and filed.

Sept. 10. Order of Court of Appeals of this date received directing that record and proceedings be certified to that court within 15 days.

" 13. Assignment of errors and designation of record filed by attorney for defendant.

" 15. Designation of record filed by Assistant Corporation Counsel.

I hereby certify under the Seal of this Court, that the foregoing is a true copy of the record of the proceedings had in the Juvenile Court in the above-entitled case. Sept. 18, 1923.

(Seal of the Juvenile Court of the District of Columbia.)

PERCY WATZMAN,
Deputy Clerk Juvenile Court, District of Columbia.

11 Filed Nov. 30, 1921. Clerk Juvenile Court, D. C.

DISTRICT OF COLUMBIA, ss:

In the Juvenile Court of the District of Columbia, November Term,
A. D. 1921.

Francis H. Stephens, Esq., Corporation Counsel in and for the District of Columbia, who, for the said United States, prosecutes in this behalf, by Lewis B. Perkins, Esq., his Assistant, comes here into Court, at the District aforesaid, on the thirtieth day of November in the year of our Lord one thousand nine hundred and twenty-one in this said Term, and for the said United States, gives the Court here

to understand and be informed, on the oath of one Donald V. Murphy that one Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson late of the District aforesaid, on the seventeenth day of September in the year of our Lord one thousand nine hundred and twenty-one, with force and arms, at the District aforesaid, and within the jurisdiction of this Court, did then and there unlawfully contribute to the delinquency of Tripoli Scafone, a minor under the age of seventeen years, in that the said Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson, did then and there persuade, encourage, entice and decoy the said Tripoli Scafone, to commit a misdemeanor, to-wit, the commission of an indecent and immoral act; the said Tripoli Scafone having heretofore been convicted more than once of having violated the laws of the United States, or the laws, ordinances or regulations in force in the District of Columbia, said convictions being in the Juvenile Court of the District of Columbia as follows:

July 9, 1920, Taking Property another;	Case No. 30936;
Nov. 22, 1921, Dis. Conduct;	" " 33835;
Nov. 22, 1921, " "	" " 33836;
Nov. 22, 1921, " "	" " 33837,

against the form of the statute in such case made and provided, and against the peace and Government of the United States of America.

Whereupon, the said Corporation Counsel, who, in this behalf, prosecutes for the said United States, in manner and form as aforesaid, prays the consideration of the Court here in the premises, and that due proceedings may be had against the said Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson in this behalf to make him answer to the said United States touching and concerning the premises aforesaid.

FRANCIS H. STEPHENS,
Corporation Counsel in and for the District of Columbia,
 (Signed) By LEWIS B. PERKINS,
His said Assistant.

Personally appeared Donald V. Murphy before me this thirtieth day of November, A. D. 1921, and being duly sworn according to law doth declare and say that the facts as set forth in the foregoing information are true.

(Seal of the Juvenile Court of the District of Columbia.)

(Signed) PERCY WATZMAN,
Deputy Clerk Juvenile Court of the District of Columbia.

A True Copy: Teste:
 PERCY WATZMAN,
Deputy Clerk, Juvenile Court, D. C.

Sept. 19th, 1923.

[Endorsed:] No. 33882. United States vs. Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson. 23/W. Con-

tributory Delinquency. Witnesses: Donald V. Murphy, #3. H. N. Nelson, #3. James L. Rochford, #3. Tripoli Scafone, 323 D St., S. W. D. Filed Nov. 30, 1921. Clerk Juvenile Court, D. C. Jail.

12 In the Juvenile Court of the District of Columbia, November Term, 1921.

No. 33883

UNITED STATES

vs.

RICHARD FRIZZELL, alias RAYMOND FRIZZELL, alias HENRY VERNON ANDERSON.

Information for Contributory Delinquency.

Atty. for Deft., A. R. Mallowny.

Proceedings.

1921.

Nov. 30. Information filed.

Dec. 2. Case called. Arraignment waived and plea not guilty entered. Case continued to Dec. 5, 1921, at 1 p. m. Bond fixed at \$1,000.00 see #33880.

" 5. Case called, plea not guilty withdrawn. Demurrer and motion to quash filed by attorney for the defendant. Case continued to Dec. 12, 1921, 1 p. m.

" 12. Motion denied and demurrer overruled, attorney for defendant states that defendant will stand on demurrer. Defendant states that his name is Richard Frizzell. Case continued subject to call, see #33880.

1923.

July 23. Case set for July 26, 1923.

" 26. Defendant adjudged guilty, defendant sentenced to serve three months in jail, sentence to be served at expiration of sentence in #33882.

Aug. 2. In order to give defendant right to apply for writ of error, sentence of July 26, 1923, set aside. Defendant sentenced to three months in D. C. jail, sentence to be served at expiration of sentence in case #33882. Notice of intention to apply for writ of error given by attorney for defendant, bond fixed at \$250.00, bond of \$1,000 to apply in four cases Chas. D. Hood, surety, given by defendant and filed in case No. 33879.

" 6. Time for signing bill of exceptions extended to Aug. 20, 1923.

" 20. Bill of exceptions signed and filed.

Sept. 10. Order of Court of Appeals of this date received directing that record and proceedings be certified to that court within 15 days.

Sept. 13. Assignment of errors and designation of record filed by attorney for defendant.

“ 15. Designation of record filed by Assistant Corporation Counsel.

I hereby certify under the Seal of this Court, that the foregoing is a true copy of the record of the proceedings had in the Juvenile Court in the above-entitled case. Sept. 18, 1923.

(Seal of the Juvenile Court of the District of Columbia.)

PERCY WATZMAN,

Deputy Clerk Juvenile Court, District of Columbia.

13 Filed Nov. 30, 1921. Clerk Juvenile Court, D. C.

DISTRICT OF COLUMBIA, ss:

In the Juvenile Court of the District of Columbia, November Term,
A. D. 1921.

Francis H. Stephens, Esq., Corporation Counsel in and for the District of Columbia, who, for the said United States, prosecutes in this behalf, by Lewis B. Perkins, Esq., his Assistant, comes here into Court, at the District aforesaid, on the thirtieth day of November in the year of our Lord one thousand nine hundred and twenty-one in this said Term, and for the said United States, gives the Court here to understand and be informed, on the oath of one Donald V. Murphy that one Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson late of the District aforesaid, on or about the fifteenth day of November in the year of our Lord one thousand nine hundred and twenty-one, with force and arms, at the District aforesaid, and within the jurisdiction of this Court, did then and there unlawfully contribute to the delinquency of Phillip May, a minor under the age of seventeen years, in that the said Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson, did then and there persuade, encourage, entice and decoy the said Philip May, to commit a misdemeanor, to-wit, the commission of an indecent and immoral act; the said Philip May having heretofore been convicted more than once of having violated the laws of the United States, or the laws, ordinances or regulations in force in the District of Columbia, said convictions being in the Juvenile Court of the District of Columbia as follows:

November 22, 1921, Incurability; Case No. 33833;

November 22, 1921, Dist. Conduct; “ “ 33831;

against the form of the statute in such case made and provided, and against the peace and Government of the United States of America.

Whereupon, the said Corporation Counsel, who, in this behalf, prosecutes for the said United States, in manner and form as aforesaid, prays the consideration of the Court here in the premises, and that due proceedings may be had against the said Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson in this behalf

to make him answer to the said United States touching and concerning the premises aforesaid.

FRANCIS H. STEPHENS,
Corporation Counsel in and for the District of Columbia,
(Signed) By LEWIS B. PERKINS,
His said Assistant.

Personally appeared Donald V. Murphy before me this thirtieth day of November, A. D. 1921, and being duly sworn according to law doth declare and say that the facts as set forth in the foregoing information are true.

(Signed) PERCY WATZMAN,
Deputy Clerk Juvenile Court of the District of Columbia.

A True Copy: Teste:

(Seal of the Juvenile Court of the District of Columbia.)

PERCY WATZMAN,
Deputy Clerk, Juvenile Court, D. C.

Sept. 19th, 1923.

[Endorsed:] No. 33883. United States vs. Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson. 23/W. Contributory Delinquency. Witnesses: H. N. Nelson, James L. Rochford, #3. Donald V. Murphy, #3. Philip May, 488 Maryland Ave., S. W. Filed Nov. 30, 1921. Clerk Juvenile Court, D. C. Jail.

14 Filed Dec. 5, 1921. Clerk Juvenile Court, D. C.

In the Juvenile Court of the District of Columbia.

No. 33879.

UNITED STATES

VS.

RICHARD FRIZZELL.

Demurrer.

Now comes the defendant, by his attorney, and says that the information is bad in substance.

(Signed) ALEX. R. MULLOWNY,
Attorney for Defendant.

Matters of Law to be Argued.

1. The information failing to allege that the defendant knew that the said child was a delinquent one, charges no offence in alleging that the defendant contributed to its delinquency.

2. The information failing to allege that the child was a delinquent one conforming to the terms of the statute defining such child, charges no offence in alleging that the defendant contributed to its delinquency.

A True Copy: Teste:

[Seal of the Juvenile Court of the District of Columbia.]

PERRY WATZMAN,

Deputy Clerk, Juvenile Court, D. C.

Sept. 21st, 1923.

I hereby certify under the Seal of this Court that each information in cases numbered 33881, 33882, and 33883, United States vs. Richard Frizzell, was demurred to for the same reasons as above stated.

[Seal of the Juvenile Court of the District of Columbia.]

PERRY WATZMAN,

Deputy Clerk Juvenile Court, D. C.

[Endorsed:] In the Juvenile Court of the District of Columbia. No. 33879. United States vs. Richard Frizzell. Demurrer. A. R. Mulloony, Atty.-at-Law. Filed Dec. 5, 1921. Clerk Juvenile Court, D. C.

15 Filed Dec. 5, 1921. Clerk Juvenile Court, D. C.

In the Juvenile Court of the District of Columbia.

No. 33879.

UNITED STATES

vs.

RICHARD FRIZZELL.

Motion to Quash.

Now comes the defendant, by his counsel, and moves the Court to quash the information filed in the above entitled cause for the following reasons:

1. Because the information is vague, indefinite, and fails to charge any offence under the statute in such case made and provided.

2. Because the information fails to allege certain material allegation of the definition of the offence to sustain the charge in that the defendant was a person responsible, or one having the care and custody of the said child to be charged with contributing to its delinquency.

3. Because the information does not allege that the defendant was a person having any knowledge that the said child was a

delinquent one, in charging the offence that he did contribute to the delinquency.

4. Because the information fails to allege knowledge, on the part of the defendant, that said child was delinquent to make it an offence for him to contribute to its delinquency.

5. Because the allegations of the information do not show that the child was a delinquent one conforming to the terms of the statute defining such child, and therefore no offence is charged in alleging that the defendant contributed to its delinquency.

6. And for other and apparent reasons upon the fact of the record of said cause.

(Signed)

ALEX. R. MULLOWNY,
Attorney for Defendant.

A True Copy: Teste:

[Seal of the Juvenile Court of the District of Columbia.]

PERRY WATZMAN,
Deputy Clerk, Juvenile Court, D. C.

Sept. 21st, 1923.

[Endorsed:] In the Juvenile Court of the District of Columbia. No. 33879. United States vs. Richard Frizzell. Motion to Quash. A. R. Mullowny, Atty.-at-Law. Filed Dec. 5, 1921. Clerk Juvenile Court, D. C.

16 In the Juvenile Court of the District of Columbia.

I hereby certify under the Seal of this Court that a motion to quash similar to the one herewith was filed in each of cases numbered 33881, 33882, and 33883, United States vs. Richard Frizzell.

[Seal of the Juvenile Court of the District of Columbia.]

PERRY WATZMAN,
Deputy Clerk Juvenile Court, D. C.

17 Supreme Court of the District of Columbia.

No. 38712, Criminal Number.

UNITED STATES, Plaintiff,

vs.

RICHARD FRIZZELL, Defendant.

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, do hereby certify the annexed to be a true copy of the original Docket Entries as (they) appears of record in the Clerk's office of said Court in above-entitled cause.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, this 15th day of September, A. D. 1923.

[Seal of Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

By S. H. BEACH,
Assistant Clerk.

18 Supreme Court of the District of Columbia—Criminal Court.

No.	Parties.	Charges.	Attorneys.	Costs.
38712.	United States.	Grand Larceny.	For Prosecution— U. S. Attorney.	Attorney. Marshal.. Clerk.... Witnesses
	vs. Richard Frizzell.		For Defendant— A. R. Mallowney.	

Date.	Proceedings.	U. S. witnesses.	Defendant's witnesses.
1921, Dec.	2. Presentment and Indictment filed. 3. Arraigned Plea Not Guilty. 9. Plea Not Guilty withdrawn. Plea Guilty entered. Remanded. 23. Sentenced to Penitentiary for a period of two years to take effect from and including this date. Warrant for Removal issued.		

[Seal of the Supreme Court of the District of Columbia.]

19 Court of Appeals of the District of Columbia, April Term
1923.

Case No. 4044.

RICHARD FRIZZELL, etc., Plaintiff in Error,

vs.

UNITED STATES.

Addition to Record per Stipulation of Counsel.

It is hereby stipulated that the Bill of Exceptions, in the above entitled cause, which was inadvertently omitted by the clerk of the Juvenile Court, be attached and made a part of the record. Also copy of docket entries of Criminal Court of Supreme Court of District of Columbia.

ALEX. R. MULLOWNY,
Attorney for Plaintiff in Error.
L. B. PERKINS,
Asst. Corporation Counsel.

[Endorsed:] No. 4044. Richard Frizzell, etc., Plaintiff in Error,
vs. United States. Stipulation of Counsel.

In the Juvenile Court of the District of Columbia.

Information	No.	33,879.
"	"	33,881.
"	"	33,882.
"	"	33,883.

UNITED STATES

VS.

RICHARD FRIZZELL, alias RAYMOND FRIZZELL, alias HENRY VERNON ANDERSON.

Bill of Exceptions.

Be it remembered that the above entitled causes were called for trial on the 12th day of December, 1921, on a charge in each of the four informations of encouraging, causing and contributing to the delinquency of a minor child under the age of seventeen years. The allegations of fact as set forth in the following information, No. 33,879, the charging part of which, material to the questions of law raised, is as follows:

"That one Richard Frizzell, alias Raymond Frizzell, alias Henry Vernon Anderson, late of the District aforesaid, on or about the 15th day of November in the year of our Lord one thousand nine hundred and twenty-one, with force and arms, at the District aforesaid, and within the jurisdiction of this Court, did then and there unlawfully contribute to the delinquency of Francis Fowler, a minor under the age of seventeen years, in that the said Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson, did then and there persuade, encourage, entice and decoy the said Francis Fowler to commit a misdemeanor, to-wit, the commission of an indecent and immoral act; the said Francis Fowler having heretofore been convicted more than once of having violated the laws of the United States, or the laws, ordinances or regulations in force in the District of Columbia, said convictions being in the Juvenile Court of the District of Columbia as follows:

Nov. 22, 1921, Dis. Conduct; Case No. 33830;

Nov. 22, 1921, Incurability; Case No. 33838,

against the form of the statute in such case made and provided, and against the peace and Government of the United States of America."

Thereupon the attorney for the defendant, first having obtained leave so to do, moved to quash said information on the ground (1) because the information is vague, indefinite and fails to charge the offence under the Statute; (2) because the information fails to allege that the defendant was a person responsible or one having the
 21 care and custody of the said minor, to be charged with the offence of contributing to its delinquency; (3) because the information fails to allege that the defendant had any knowledge

that the said minor was delinquent in charging the offence that he contributed to its delinquency; (4) because the information on its face shows that the said minor was not delinquent according to the terms of the Statute defining such delinquent minor, and therefore no offence is charged under the Statute against the defendant; that after argument of counsel the said Motion was overruled by the Court, to which action and finding of the Court the defendant excepted.

Thereupon the attorney for the defendant, having obtained leave so to do, of the Court, demurred to the said information on the ground that it was bad in substance, in that it failed to allege that the defendant knew, or was in such relationship with said minor child that he ought to have known that the said minor was delinquent in charging him with the offense of contributing to its delinquency: (2) that the information fails to allege that the minor was delinquent under the terms of the Statute, defining such minor child, and no offense is charged therefor against the defendant in the said information; that after argument of counsel the Court overruled the said demurrer, to which action and finding of the Court, the defendant excepted.

And thereupon the defendant, electing to stand upon the demurrer and the facts charging the offense as set out in the said information the Court the said 12th day of December, 1921, found the defendant guilty of the charge and continued the case subject to call.

22 And thereupon the Court considered information No. 33,-881, the charging part of which, material to the questions of law raised, is as follows:

"that one Richard Frizzel alias Raymond Frizzell alias Henry Vernon Anderson late of the District aforesaid, on the sixteenth day of September in the year of our Lord one thousand nine hundred and twenty-one, with force and arms, at the District aforesaid, and within the jurisdiction of this Court, did then and there unlawfully contribute to the delinquency of Scafone, a minor under the age of seventeen years, in that the said Richard Frizzell alias Raymond Frizzell alias Henry Anderson, did then and there persuade, encourage, entice and decoy the said Tripoli Scafone, to commit a misdemeanor, to-wit, the commission of an indecent and immoral act; the said Tripoli Scafone having heretofore been convicted more than once of having violated the laws of the United States, or the laws, ordinances or regulations in force in the District of Columbia, said convictions being in the Juvenile Court of the District of Columbia as follows:

July 9, 1920,	Taking property of another;	Case No. 30936;
Nov. 22, 1921,	Dis. Conduct;	" No. 33836;
Nov. 22, 1921,	" "	" No. 33835;
Nov. 22, 1921,	" "	" No. 33837,

against the form of the statute in such case made and provided, and against the peace and Government of the United States of America."

And thereupon the attorney for the defendant, first having obtained leave of the Court, moved to quash the said information on the ground as stated in the motion to quash above and after argument of counsel the Court overruled the said motion, to which action and finding of the Court, the defendant excepted.

And thereupon the attorney for the defendant, first having obtained leave of the Court, demurred to the said information on the grounds as set forth in the demurrer above, and after argument of counsel the Court overruled the said demurrer, to which action and finding of the Court the defendant excepted.

And thereupon the defendant electing to stand upon the demurrer and the facts charging the offense as set out in the said information, the Court the said 12th day of December, 1921, found the defendant guilty of the charge and continued the case subject to call.

And thereupon the Court considered information No. 33,882, the charging part of which, material to the question of law raised, is as follows:

"that one Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson late of the District aforesaid, on the seventeenth day of September in the year of our Lord one thousand nine hundred and twenty-one, with force and arms, at the District aforesaid, and within the jurisdiction of this Court, did then and there unlawfully contribute to the delinquency of Tripoli Scafone a minor under the age of seventeen years, in that the said Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson, did then and there persuade, encourage, entice and decoy the said Tripoli Scafone, to commit a misdemeanor, to-wit, the commission of an indecent and immoral act; the said Tripoli Scafone having heretofore been convicted more than once of having violated the laws of the United States, or the laws, ordinances or regulations in force in the District of Columbia, said convictions being in the Juvenile Court of the District of Columbia as follows:

July 9, 1920,	Taking property of another;	Case No. 30936;
Nov. 22, 1921,	Dis. Conduct	" " 33835;
Nov. 22, 1921,	" "	" " 33836;
Nov. 22, 1921,	" "	" " 33837,

against the form of the statute in such case made and provided, and against the peace and Government of the United States of America."

And thereupon the attorney for the defendant, first having obtained leave of the Court, moved to quash the said information on the ground as stated in the motion to quash above and after argument of counsel the Court overruled the said motion, to which action and finding of the Court, the defendant excepted.

And thereupon the attorney for the defendant, first having obtained leave of the Court, demurred to the said information on the grounds as set forth in the demurrer above, and after argument of

counsel the Court overruled the said demurrer, to which action and finding of the Court the defendant excepted.

And thereupon the defendant electing to stand upon the demurrer and the facts charging the offense as set out in the said information, the Court the said 12th day of December, 1921, found
24 the defendant guilty of the charge and continued the case subject to call.

And thereupon the Court considered information No. 33,883, the charging part of which, material to the question of law raised, is as follows:

"that one Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson late of the District aforesaid, on or about the fifteenth day of November in the year of our Lord one thousand nine hundred and twenty-one, with force and arms, at the District aforesaid, and within the jurisdiction of this Court, did then and there unlawfully contribute to the delinquency of Philip May, a minor under the age of seventeen years, in that the said Richard Frizzell alias Raymond Frizzell alias Henry Vernon Anderson, did then and there persuade, encourage, entice and decoy the said Philip May to commit a misdemeanor, to-wit, the commission of an indecent and immoral act; the said Philip May having heretofore been convicted more than once of having violated the laws of the United States, or the laws, ordinances or regulations in force in the District of Columbia, said convictions being in the Juvenile Court of the District of Columbia as follows:

November 22, 1921, Incurability; Case No. 33833;
November 22, 1921, Dis. Conduct " " 33831;

against the form of the statute in such case made and provided, and against the peace and Government of the United States of America."

And thereupon the attorney for the defendant, first having obtained leave of the Court, moved to quash the said information on the ground as stated in the motion to quash above and after argument of counsel the Court overruled the said motion, to which action and finding of the Court, the defendant excepted.

And thereupon the attorney for the defendant, first having obtained leave of the Court, demurred to the said information on the grounds as set forth in the demurrer above, and after argument of counsel the Court overruled the said demurrer, to which action and finding of the Court the defendant excepted.

And thereupon the defendant electing to stand upon the demurrer and the facts charging the offense as set out in the said information, the Court the said 12th day of December, 1921, found
25 the defendant guilty of the charge and continued the case subject to call.

And thereupon, on the 2nd day of August, 1923, the defendant was brought before the Court for final judgment on each of the four informations and sentenced to three months' imprisonment on each

of the four informations, and three months' imprisonment of one to take effect at the expiration of the other, to which action of the Court and sentence the defendant excepted.

All the foregoing exceptions were duly noted by counsel for the defendant at the time of the ruling of the Court. The said exceptions being then and there duly noted upon the minutes of the Justice presiding, and notice given of an intention to appeal to the Court of Appeals for a writ of error. Said exceptions having been submitted in writing as required by the rule of the Court of Appeals, and counsel then and there prayed to the Court to sign the Bill of Exceptions and fix the amount of the appeal bond, and the same was accordingly signed and sealed by the Court, and made a part of the record in this cause now for then this 20th day of August, A. D. 1923, and the appeal bond was fixed at One Thousand Dollars (\$1,000.00).

KATHRYN SELLERS,
Justice.

True copy. Test:

[Seal of the Juvenile Court of the District of Columbia.]

WALDO BURNSIDE,
Clerk Juvenile Court, D. C.

[Endorsed:] No-. 33879, 33881, 33882, 33883. United States vs. Richard Frizzell, alias Raymond Frizzell, alias Henry Vernon Anderson. Bill of Exceptions. Court of Appeals, District of Columbia. Filed Oct. 3, 1923. Henry W. Hodges, clerk.

Endorsed on cover: District of Columbia Juvenile Court. No. 4044. Richard Frizzell, &c., plaintiff in error, vs. United States. Court of Appeals, District of Columbia. Filed Sep. 24, 1923. Henry W. Hodges, clerk.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

FEB 2 - 1924

Henry M. Hodges

CLERK.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1923.

No. 4044.

No. 17, Special Calendar.

RICHARD FRIZZELL, ALIAS RAYMOND FRIZ-
ZELL, ALIAS HENRY VERNON ANDERSON,
APPELLANT,

vs.

UNITED STATES.

BRIEF FOR APPELLANT.

A. R. MULLOWNY,
Attorney for Appellant.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1923.

No. 4044.

RICHARD FRIZZELL, ALIAS RAYMOND FRIZZELL, ALIAS HENRY VERNON ANDERSON,
APPELLANT,

vs.

UNITED STATES.

BRIEF FOR APPELLANT.

Statement of the Case.

On the 12th day of December, 1921, the appellant was tried upon four informations, each charging him with contributing to the delinquency of a minor under Section 9 and Section 24 of the Act of Congress, creating the Juvenile Court, 34th Statutes at Large, page 73; Code D. C., page 387.

Section 9 defines a child to be delinquent as one "having been convicted of an offense more than once," and Section 24 declares "in all cases where any child is found to be delinquent, as defined by Section 9, the parent, guardian, or person responsible for *such* child contributing to *such* child's delinquency, shall be guilty of a misdemeanor."

In two of the informations the charges are laid "on or about the 15th day of November, 1921," that appellant contributed to the delinquency of the child,

the said child having heretofore been convicted more than once of a violation of the law as follows: November 22, 1921, Incorrigibility, and on the same date, November 22, 1921, Disorderly Conduct. The conviction of the children being alleged seven days after the defendant had any dealings with them.

In the other two informations the charges are laid on the 16th of September, 1921, and on the 17th day of September, 1921, and the allegation is that the child was delinquent in having been heretofore convicted of taking the property of another on July 9, 1920, and of having been convicted of Disorderly Conduct three times on the same day, November 22, 1921, Record, page 8 and 11.

In these two informations the minor had only been convicted once and not more than once as required by the statute before the date of the offense; the other three charges of Disorderly Conduct being some two months after the dates of the offenses as laid.

The appellant moved to quash and demurred to each of the informations on the ground, first, that the informations were vague, indefinite, and failed to charge any offense under the law; second, that there was no allegation of knowledge or any allegation that the defendant was responsible for the said child or that he stood in such relationship with the child that he knew or ought to have known that the child was delinquent.

The court overruled the motions to quash and the demurrers, and the defendant then and there elected to stand upon the demurrers and stood ready for sentence, but the court, on its own motion, without the consent of the defendant, on the said 12th day of December, 1921, continued the cases subject to call. Record, page 7.

At this time the appellant was awaiting sentence in the Supreme Court on a charge of Grand Larceny, having plead guilty on December 9th, and on the 23rd

of December, 1921, was sentenced by Justice Siddons to two years in the penitentiary. After he had served the sentence of two years, allowing time for good conduct, he was ordered before the Juvenile Court, and on the 2nd day of August, 1923, sentenced upon each of the four informations to three months' imprisonment, the sentence of one to take effect at the expiration of the other, to which action of the court an exception was noted.

First Assignment of Error.

Do the facts alleged in the informations charge an offense under the law?

The pertinent part of Section 9 is as follows:

"The term 'delinquent' child or children as used in this act shall be held to mean and include any child who has been convicted more than once of violating any law of the United States or any laws, ordinances, or regulations in force in the District of Columbia."

The pertinent part of Section 24 is as follows:

"That in all cases where any child shall be found to be a delinquent child as defined in Section 9 of this act, the parent or parents, legal guardian, or person responsible for, or by any act, encouraging, causing, or contributing to the delinquency of such child, shall be guilty of a misdemeanor, and upon trial and conviction thereof in the Juvenile Court of the District of Columbia, which is hereby given jurisdiction, shall be fined in a sum not exceeding \$200.00, or imprisoned in the District Jail for a period not exceeding three months or by both such fine and imprisonment. The court may impose conditions upon any person found guilty under this act and as long as such person shall comply therewith to the satisfaction of the court the sentence imposed may be suspended."

In information No. 33879 and No. 33883 the dates of the offenses alleged are, "on or about the 15th of November, 1921," and then alleges the child "having heretofore been convicted more than once as follows: November 22, 1921, Incurability; November 22, 1921, Disorderly Conduct." Record, pages 5 and 13.

In the other two informations the dates of the offenses are alleged on the 16th and 17th of September, 1921, and then alleges that the defendant contributed to the delinquency of the child, the said child "having heretofore been convicted more than once as follows: July 9, 1920, Taking Property of Another; November 22, 1921, Disorderly Conduct; November 22, 1921, Disorderly Conduct, and November 22, 1921, Disorderly Conduct." Record, pages 8 and 11.

It will be noted that in informations No. 33879 and No. 33883, the child, on the dates of the offenses, had not been convicted of any violation of law, nor from the record guilty of any improper conduct nor delinquent in any manner.

In the other two informations, on the dates of the offenses, the child had been convicted only once and *not more than once* as required by the terms of the statute.

In informations No. 33879 and No. 33883, the dates of the offenses are alleged as "on or about the 15th of November, 1921." This was improper and of itself rendered the informations demurrable, defective and fatal in charging the defendant of crime. Time and place must be alleged with certainty.

United States *vs.* Winslow, 3rd Sawyer, page 337.

State *vs.* O'Keefe, 41 Vermont, page 691.

Clark *vs.* State, 34 Ind., page 436.

First Bishop's Criminal Procedure, Section 390.

An inspection of the whole statute shows that the court's jurisdiction is limited to parents, guardians and persons responsible for delinquent and neglected children, and not over adults generally. *United States vs. Moss*, 29th Appeals, D. C., page 188.

Insofar as adults are concerned the statute is penal and not remedial in character, and is to be strictly construed. To punish an adult it must be done with due process of law and in a legal manner. The adult is either guilty or not guilty of a misdemeanor. In *Mills vs. Brown*, 31 Utah, 473, the court held a statute unconstitutional which required a parent or other person to appear and show his qualifications and fitness for the control of the child, and if not satisfactory to be subject to a conviction for a misdemeanor. See also *State vs. Eisen*, 99 Pac. Rep., page 282.

The four informations do not charge any offense. The allegations show the children were not delinquents under the terms of the statute on the dates charging the offenses, and the defendant could not be guilty under the statute. It must appear from the information, without going further, that the acts alleged will support the judgment and the sentence. *United States vs. Cruikshank*, 92 U. S., page 542; *United States vs. Hess*, 124 U. S., page 483; *United States vs. Capital Traction Co.*, 34 App. D. C., page 596.

The informations charging no offense the demurrers should have been sustained.

Second Assignment of Error.

The informations should allege knowledge or some allegation that the defendant stood in such relationship with the child that he knew or ought to have known that the child was delinquent.

Each of the four informations fail to allege any knowledge or circumstance that the defendant knew

that the child was delinquent. This was an essential element of the definition of the offense. Its omission was certainly a matter of substance and not a defect of form only. *United States vs. Carll*, 105 U. S., page 611; *United States vs. Simmons*, 96 U. S., page 362.

An examination of the statute shows clearly its purpose to be the welfare and reformation of neglected and delinquent children. Section 8 relates, exclusively, to offenses against children. Section 9 defines the term "delinquent" to mean and include any child who has been *convicted more than once* of violating the law." Section 24 contemplates that when any child shall be found to be delinquent, that is convicted more than once, and placed in the custody of any person, parent or guardian, such person must necessarily know of its delinquency, and if by any act contribute to the delinquency of such child shall be guilty of a misdemeanor.

The four informations fail to allege that the defendant was within the class of persons enumerated in the statute. They simply charge that the defendant "did unlawfully contribute to the delinquency of the minor."

The statute is specific, "that in all cases where any child shall be found to be delinquent as defined in Section 9 of the act, the parent or parents, legal guardian or person having the custody of *such* child, or any other person responsible for or by any act encouraging, causing or contributing to the delinquency of *such* child, shall be guilty of a misdemeanor."

This court, in *United States vs. Moss*, 29th Appeals, D. C., page 194, in passing upon the construction of this Section 24, says: "The jurisdiction of the court is over parents and guardians of neglected and delinquent children, not adults generally. The words in the statute 'or person responsible for such child' mean *in loco parentis* of the same class of persons."

In passing upon a somewhat similar statute, in *Gibson vs. The People*, 44 Colorado, page 600, the court

says: "The statute makes it an offense for the parent, legal guardian or person having the custody of such delinquent child, or any other person. The familiar rule, where words of general import follow specific designation, the application of general language is controlled by the specific. Therefore, 'any other person' means other like person, that is the person having the control of the child or person standing in the same relation as parent, guardian, etc."

As the defendant did not stand in any such relation nor is there any allegation that he was within the class of persons responsible for such child, he could not be guilty under the statute. General words follow particular ones. And the rule is to construe the former as applicable to persons or things of like kind. See title *Ejusdem Generis*, 26 Ency. of Law, Vol. 26, page 609.

Third Assignment of Error.

In sentencing the defendant after some twenty terms of the court had expired.

The court holds monthly terms, Section 19 of the said act, 34th Statutes at Large, page 73.

On the 9th of December, 1921, the defendant plead guilty to the charge of grand larceny in the Supreme Court, Record, page 17. Three days later on the 12th of December, 1921, the demurrers were overruled and the defendant elected to stand on the demurrers and stood ready for sentence, but the court, on its own motion, without the consent of the defendant, continued the cases subject to call. On the 23rd of December, 1921, the defendant was sentenced to two years in the penitentiary by Justice Siddons. Record, page 17.

It is apparent from the record that the purpose of continuing the cases subject to call was to further punish and imprison the defendant after he had served the sentence to be imposed in the Supreme Court, for

on August 2, 1923, after the term of imprisonment of two years had expired, the defendant was brought before the Juvenile Court and sentenced to twelve months' imprisonment on the four informations. Record, pages 4, 7, 10 and 12.

The Juvenile Court is a court of special, limited, statutory jurisdiction. It has no inherent power of administration. *West vs. United States*, 37 W. L. R., 402.

The sentence of the defendant, after some twenty terms of the court had expired, was beyond its authority. When the defendant elected to stand upon the demurrers it was the duty of the court to sentence him, or suspend the sentence under terms and conditions satisfactory to the court. This was not done, but the court allowed term after term to pass, without following the definite procedure defined by the statute. The object of a conviction for crime and imprisonment is not to punish the individual but to deter others by example from crime. When a sentence is suspended or postponed such action is for the benefit or reformation of the defendant and on his motion or consent. It is the duty of the court to pronounce sentence promptly. *People vs. Allen*, 155 Illinois, page 61.

In *People vs. Kennedy*, 58 Mich., page 372, "A defendant on bail, awaiting sentence, is on the same footing as if he were in jail, and if his sentence is delayed from time to time until the full term of his imprisonment, to which he could be sentenced, has expired he is entitled to his liberty. *United States vs. Wilson*, 46 Fed. Rep., page 748.

It is, therefore, evident the court was without authority to pronounce the sentence imposed, and the defendant should have been discharged.

Respectfully submitted.

A. R. MULLOWNY,
Attorney for Appellant.

COURT OF APPEALS
DISTRICT OF COLUMBIA
FILED

APR 15 1924

Henry M. Hodges

CLERK.

IN THE

Court of Appeals, District of Columbia.

OCTOBER TERM, 1923.

No. 4044.

RICHARD FRIZZELL, ALIAS RAYMOND FRIZZELL,
ALIAS HENRY VERNON ANDERSON, APPELLANT,

vs.

UNITED STATES.

BRIEF FOR DEFENDANT IN ERROR.

F. H. STEPHENS,

L. B. PERKINS,

Attorneys for Defendant in Error.

IN THE
Court of Appeals, District of Columbia.

OCTOBER TERM, 1923.

No. 4440.

RICHARD FRIZZELL, ALIAS RAYMOND FRIZZELL,
ALIAS HENRY VERNON ANDERSON, APPELLANT,

vs.

UNITED STATES.

BRIEF FOR DEFENDANT IN ERROR.

Statement of the Case.

Four informations were filed against appellant in the Juvenile Court of the D. C., on November 30, 1921, charging him with having contributed to the delinquency of minor children, under Sections 9 and 24 of the Act of March 19, 1906, 34 Stat. at Large, 73, D. C. Code, page 387. The informations as filed in the Juvenile Court were numbered

33879, 33881, 33882 and 33883, and for convenience these numbers will be used to herein distinguish the cases (Record, pp. 4 to 14).

Information No. 33879 charged appellant with having contributed to the delinquency of one Francis Fowler, "on or about the 15th day of November in the year of our Lord, 1921," * * * the said Francis Fowler having heretofore been convicted more than once of having violated the laws of the United States or the laws, ordinances or regulations in force in the District of Columbia" * * * that is, the child had been more than once convicted before November 30, 1921, the date on which the information was filed against appellant (Record, p. 5). The two convictions of the child grew out of the relations he had had with appellant, to-wit: 1st, "Disorderly conduct"; 2nd, "Incorrigibility." Information No. 33881 charged appellant with having contributed to the delinquency of one Tripoli Scafone, "on the sixteenth day of September in the year of our Lord, 1921, * * *." The last three convictions of the child were occasioned by appellant and were for "Disorderly conduct" (Record, p. 8). Information No. 33882 charged appellant with having contributed to the delinquency of one Tripoli Scafone, "on the seventeenth day of September A. D. 1921," the last three convictions of the child being occasioned by appellant's conduct and were for "Disorderly conduct." Record, page 11, and information No. 33883 charged appellant with having contributed to the delinquency of one Philip May, "on or about" the 15th day of November, A. D. 1921, in which the two convictions of the child grew out of his relations with appellant; first, being for "Incorrigibility," and the second for "Disorderly conduct." (Record, p. 13.)

All the informations charged that the persons to whose delinquency appellant contributed had been convicted before November 30, 1921, the date they were filed—of having violated more than once the laws of the United States or the laws, ordinances or regulations in force in the District of Columbia, and specifically set out the dates and places of the convictions and character of the crimes.

Appellant was arraigned on all four informations on December 2, 1921, and entered a plea of not guilty to each. On December 5, 1921, he withdrew his several pleas of not guilty and filed motions to quash and demurrers to each of the four informations, all which were overruled and denied on December 12, 1921, when the cases were continued subject to call.

On December 3, 1921, appellant was arraigned in the Supreme Court of the District of Columbia upon an indictment for grand larceny, upon which, on December 23, 1921, he was sentenced to the penitentiary for two years from that date (Record, p. 17).

On July 23, 1923, the several cases in the Juvenile Court were set for July 26, 1923, on which date the appellant was adjudged guilty on all four informations. Sentence was finally passed upon each of the four judgments on August 2, 1923, giving appellant three months in the District of Columbia jail upon each, to take effect in consecutive order as one expired (Record, pp. 4, 7, 9, 10 & 12).

The pertinent parts of the statute involved are sections 9 and 24.

Section 9 defines a delinquent child as follows:

“The term ‘delinquent’ child or children as used in this act shall be held to mean and include any child

who has been convicted more than once of violating any law of the United States or any laws, ordinances, or regulations in force in the District of Columbia."

Section 24 defines the punishment of the person contributing or responsible for the delinquency as follows:

"That in all cases where any child shall be found to be a delinquent child, as defined in section nine of this act, the parent or parents, legal guardian, or person having the custody of such child, or any other person responsible for or by any act encouraging, causing, or contributing to the delinquency of such child, shall be guilty of a misdemeanor, and upon trial and conviction thereof in the Juvenile Court of the District of Columbia, which is hereby given jurisdiction, shall be fined in a sum not exceeding two hundred dollars or imprisoned in the District jail for a period not exceeding three months, or by both such fine and imprisonment. The court may impose conditions upon any person found guilty under this act, and as long as such persons shall comply therewith to the satisfaction of the court the sentence imposed may be suspended."

A conflict appears between the record proper of the clerk of the court and the recitals contained in the bill of exceptions as to the *date* of adjudication of guilt in the four cases in question, the record of the clerk showing that in all four cases the motions to quash and the demurrers were overruled on December 12, 1921, and the case continued subject to call, but that adjudication of guilt did not take place until July 26, 1923 (see Record, pages 4, 7, 10, 12), whereas the bill of exceptions recites that in all four cases the court found

the defendant guilty on the 12th of December, 1921, the same date on which it overruled the motions to quash and the demurrers, and then continued the case subject to call (see Record, pages 19, 20, 21). As will be developed in the course of the brief under the treatment of the third assignment of error, the record proper, transmitted by the clerk, controls in case of such conflict, and consequently the case was not continued subject to call *after a conviction*, but was continued subject to call after the overruling of the motions to quash and the demurrers; and a conviction was not had until July 26, 1923, after the defendant was back in this jurisdiction from serving his term in the penitentiary.

Answer to the 1st Assignment of Error.

Appellant claims hereunder that two of the informations filed against him, Nos. 33879 and 33883, are defective because the dates as alleged, "on or about the 15th day of November, A. D. 1921," are not sufficiently specific, and, secondly, that he cannot be held to answer because at the times complained of the children involved had not been convicted more than once of violating a law of the United States or an ordinance or regulations in force in the District of Columbia.

To the first contention it is submitted that time is not an ingredient of the crime charged. The rule in *U. S. vs. Winslow*, 3 Sawyer, 337, cited by appellant, is not followed in the later cases of *U. S. vs. McKinley*, 127 Fed., 166; *Bryant vs. U. S.*, 257 Fed., 378; 168 C. C. A., 418; *Thompson vs. U. S.*, 283 Fed., 895; and in *Knoll vs. U. S.*, 26 App. D. C., 457, 460, this court says:

"The second and last objection to the indictment is that it violated the fundamental rules of criminal pleading in respect of certainty.

"We do not concur in this contention. Brief as the charge is, it follows the language of the statute, and informed defendant with substantial certainty of the time, place, and character of the offense which he was called upon to defend. This is all that the settled rules of pleading in similar cases require. *State v. Wilkerson*, 170 Mo., 184, 191; 70 S. W., 478; *Trout v. State*, 111 Ind., 499, 503; 12 N. E., 1005; *Bueno v. State*, 40 Fla., 160, 167, 23 So., 862; *Com. v. Sullivan*, 146 Mass., 142, 144; 15 N. E., 491; *State v. Follet*, *supra*.

In *Thompson vs. U. S.*, *supra*, decided in the Circuit Court of Appeals, Third Circuit, September 28, 1922, the court said, page 898:

"Some of the cases hold that the words not only do not indicate a precise time, but the time is so indefinite and uncertain as to render the indictment bad * * * but the weight of authority is that the allegation that a crime was committed 'on or about' a certain date is sufficient though the precise time is not thereby stated, except in cases in which time is not an ingredient of the offense. Such allegation is a formal and not a material matter within the meaning of Sec. 1025 of the Rev. Stat. (Comp. St., Sec. 1691), which provides that no indictment shall be deemed insufficient by reason of any defect in matter of form only."

The informations particularly set out the acts alleged to have contributed to the delinquency.

As to the other contention of appellant under this assignment of error he states, on page 5 of his brief:

"The four informations do not charge any offence. The allegations show the children *were not delinquents* under the terms of the statute *on the dates charging the offences*, and the defendant could not be guilty under the statute."

In other words, appellant contends that, inasmuch as the children were not actually adjudged delinquents until a date subsequent to the date he was alleged to have committed the act of contributing to the delinquency, that therefore, on the date he is alleged to have contributed to the delinquency the children had not been adjudged delinquents, and therefore the informations did not charge an offense under the statute.

It is apparent that such a construction would entirely defeat the purpose of section 24 of the act providing for such punishment and would absolutely prevent any prosecution thereunder. To say that a child must have been adjudged a delinquent prior to the act of a defendant contributing to the delinquency is to state a legal impossibility. If the child has already been adjudged a delinquent, no subsequent act could contribute to that delinquency, because he is already delinquent. The plain purpose of the statute is that where the Juvenile Court finds a child has been guilty of conduct constituting delinquency and adjudges the child a delinquent accordingly, any person who has encouraged, caused or contributed to *such delinquency* should be subject to prosecution under Section 24 of the Juvenile Court act, and in such situation it would necessarily be the case that the act encouraging, causing or contributing to the delinquency was prior to the

formal adjudication of delinquency. Such is the basis of the four prosecutions in the instant case, it being alleged that on the 15th day of November, 1921, appellant contributed to the delinquency of Francis Fowler, the formal adjudication of such delinquency resulting from said act of November 15, 1921, being found by the Court on November 22, 1921 (Record, page 5); and it also being alleged that on the 16th day of September, 1921, the defendant contributed to the delinquency of Tripoli Scafone, the formal adjudication of the delinquency taking place in the Juvenile Court on November 22, 1921 (Record, page 8); and it also being charged that on the 17th day of September, 1921, the defendant contributed to the delinquency of Tripoli Scafone, the adjudication of delinquency resulting from such contribution taking place on November 22, 1921; and it also being alleged that on the 15th day of November, 1921, the defendant contributed to the delinquency of Phillip May, the formal adjudication of such delinquency resulting from such contribution taking place on November 22, 1921. Of course, the informations against the appellant charging him with contributing to such delinquency could not be filed until after there had been adjudications of delinquency, and in the instant case the informations were not filed until November 30, 1921. Appellant in his brief, on page 4, first paragraph, seeks to construe the language of the informations, "having heretofore been convicted more than once," as referring to dates prior to the date of the alleged unlawful act of the defendant, whereas it is perfectly obvious "having heretofore been convicted more than once" refers to a time prior to the filing of the informations.

Appellant cites *U. S. vs. Moss*, 29 App. D. C., 188, to show

that the Court had no jurisdiction under this Act over adults. This case has no direct bearing on the question here before the Court. That was a proceeding under Section 4 of the Act of March 3, 1902, 31 Stat. at Large 1095, to require the father of an illegitimate child to contribute to its support. In his second assignment of error, however, he seems to waive this contention, inasmuch as he contends that it is only the father, or other person in *loco parentis*, who can be punished under this statute.

Answer to 2d Assignment of Error.

It was not necessary to allege and prove that appellant had knowledge that the children were delinquent or that he had such relationship to them that he could have known their circumstances. The statute is silent as to knowledge. *U. S. vs. Pettus*, 84 Fed., 791; *U. S. vs. Malone*, 9 Fed., 897; 31 *Corpus Juris*, 695, Sec. 241. "Where a man commits an offense, and in pursuing his criminal purpose does that which constitutes another and different offense, it seems that it is not necessary to aver a guilty knowledge as to the resulting offense." *Corson vs. Elwell*, 2 Metc. (Mass.), 1901; 35 Am. Dec., 398; 31 C. J., 696, Sec. 241.

The other contention hereunder goes to the meaning of "or any other person" used in Section 24 of the Act. Appellant claims it is not applicable to him because the phrase means "any other persons" of the *ejusdem generis* of the words "parent," "legal guardian," or "person having custody" of the child immediately preceding it.

The rule of *ejusdem generis* will not apply when it is evident that the intention of the Statute will be thwarted.

State vs. Williams, 35 Mo. App., 541, 548; *State vs. Broderick*, 7 Mo. App., 19, 20.

This Court has in effect held contrary to appellant's view in a similar case where it denied a petition for writ of error wherein the question was raised. *McCandlish vs. U. S.* original docket, No. 833:

"In construing the Juvenile Court Law providing that in all cases where any child shall be dependent or delinquent the parent or parents, guardian or person having the custody of such child, 'or any other person,' who shall, by any act, contribute to the dependency or delinquency of the child, shall be guilty of a misdemeanor, it was held that any one who contributes to the dependency of a child, whatever may be his relation thereto, becomes subject to punishment, the words 'any other person' including all persons committing the acts specified. *In re Mills Sing*, 14 Cal. A., 512, 513, 112 P. 582. To the same effect *Wilson v. People*, 44 Colo., 608, 99 P. 335; *Gibson v. People*, 44 Colo., 600, 99 P. 333; *State v. Plastino*, 67 Wash. 374, 375, 121 P. 851." 3 Corpus Juris P. 248. Note 45a.

Answer to 3d Assignment of Error.

Counsel for appellant, in discussing his third assignment of error, on pages 7 and 8 of his brief, seems to give the impression that the Juvenile Court found the appellant guilty on the 12th day of December, 1921, and continued the cases subject to call for the imposition of sentence. As pointed out in our statement of the case, *supra*, there is a conflict between the record of the court proceedings and the recitals in the bill of exceptions, the recitals in the bill of exceptions sus-

taining the apparent position of appellant that the court did find appellant guilty on the 12th of December, 1921, and then continued the case subject to call. The fact is, however, that the adjudication of guilt was not made on the 12th of December, 1921, but the court on that date, after overruling the motions to quash and the demurrers, continued the case subject to call in view of the fact that the defendant was about to be sentenced in the Supreme Court of the District of Columbia, and, in fact, was sentenced by the Supreme Court to a term of two years in the penitentiary (Record, page 17), and the adjudication of guilt in the Juvenile Court took place on July 26, 1923 (Record, pp. 4, 7, 10, 12). Appellant was sentenced immediately after conviction and within the same term of court, and *not* "after some twenty terms of the court had expired," as he claims on page 7 of his brief.

In determining what is the fact as to the date of adjudication of guilt, where there is a conflict between recitals in the bill of exceptions and the record proper of the clerk of the court, it is thoroughly well settled that the record proper of the clerk of the court must control, inasmuch as the record of the clerk is the proper place for the notation of the formal steps in the proceedings, among which is the adjudication of guilt, as is likewise the judgment of the court. The common-law record consisted of the process, the pleadings, the verdict, and the judgment, and, of course, by pleadings was included all action thereon. It is not the office of a bill of exceptions to set forth matter that properly is contained in the record of the clerk. As was stated in *Evans vs. Humphreys*, 9 App. D. C., 392, 395:

“The purpose of a bill of exceptions, as has frequently been stated, is to make that a matter of record which otherwise would not appear on the record. But when the questions raised already sufficiently appear from the pleading and proceedings of record, no such bill of exceptions is necessary.”

The rule in case of a conflict between the record and the bill of exceptions is stated in Ruling Case Law, vol. 2, par. 128, as follows:

“Whatever is a part of the record proper without a bill of exceptions cannot be made a part of the record by such bill, and if there is any conflict between the two as to such matters the record proper will control. Thus, if there is a conflict between the *record proper* and the *bill of exceptions* as to the *time when the judgment* was rendered, the *former* controls.

In *Malott vs. Central Trust Company*, 168 Ind. 428, there was a conflict as to the date of rendition of final judgment, the “record proper” showing that final judgment was rendered on June 25, 1904, and the bill of exceptions reciting that it was rendered on June 30, 1904, and, in deciding that the record proper must control, the court said, on page 431:

“Final judgment, the date when rendered, motions for a new trial and in arrest of judgment, and the rulings thereon and the exceptions thereto, are a part of the record without a bill of exceptions and cannot be brought into the record by a bill of exceptions. *Wilson v. State* (1901), 156 Ind. 631, 635, 636, and authorities cited; *Harris v. State* (1900), 155 Ind. 15; *Wurfel v. State* (1906), 167 Ind. 160; 3 Ency.

Pl. and Pr., 404-406. It is evident that under the authorities cited final judgments, motions for a new trial and in arrest of judgment, and the exceptions thereto and the dates thereof, and all other matters which are a part of the record without a bill of exceptions, can only be shown by being copied into the transcript and duly certified by the clerk as a part of the record proper without a bill of exceptions.

"It follows that to determine the date when final judgment was rendered and time given within which to file bills of exceptions we must look to the record proper which must control and not to the bills of exceptions. This date, as we have shown, was June 25, 1904."

In *Newell vs. Edom*, 242 S. W., 701, 703, the court, in deciding that matter properly a part of the record would control over a mere recital of that matter in the bill of exceptions, said:

"The record before us shows that a motion for new trial was filed on December 19, 1919, and within four days after the rendition of the verdict. The fact and time of the filing of a motion for new trial must appear from the record proper, and it is not sufficient that the bill of exceptions contain recitals of the filing. The defendant has brought here a photographic reproduction of the original bill of exceptions, which indicates that the motion for new trial was filed on December 22d, which would be out of time. * * * Whatever doubt this may cast upon the matter makes no difference, inasmuch as the record proper in this case shows that the motion was filed in time. The record controls, and it is immaterial what the bill of exceptions discloses as to such matter."

In *Ashmore vs. Skene Lead Company*, 150 Ill. App., 381, 382, the court said:

"There is no decree in the record certified here by the clerk. * * * A recital in a certificate of evidence or *in a bill of exceptions* over the signature of the judge that a decree or a judgment has been entered, and even stating the legal effect thereof, does not make that recital a decree or judgment in the legal sense of the term. The decree or judgment must be enrolled in the record kept by the clerk of the court and must be inserted in the record certified by him, and if that is not done the decree or judgment is not before the court with whom such an imperfect record is filed."

It is significant, in this connection, that the record proper, in all four of the cases, as found on pages 4, 7, 10, and 12, is in accord as to the date of adjudication of guilt, and that the same took place on July 26, 1923, and did not take place on December 12, 1921.

It should be borne in mind that the instant case does not present the question of the legality of the action of the court in indefinitely suspending either the imposition of a sentence or the execution of a sentence already imposed, but, on the other hand, as heretofore stated, the record shows that at the time of the continuance subject to call on December 12, 1921, there was not an adjudication of guilt, and that the adjudication of guilt was on *July 26, 1923*, and that he was sentenced on July 26th, but as shown by the entry of August 2d, 1923 (Record, pages 4, 7, 10, and 12), the sentence of July 26th was set aside and rendered as of August 2d so as to give appellant more time to prepare

his application to the Court of Appeals. Therefore the continuance of December 12, 1921, being *prior* to any adjudication of guilt, is not affected by the decisions in some of the States to the effect that a court has no power to indefinitely postpone either the imposition of sentence after a conviction or indefinitely suspend the execution of a sentence although it might be noted, in passing, that this court has held in *Miller vs. United States*, 41 App., D. C., 52, 57, that the trial court even has the power to indefinitely suspend imposition of sentence, after a conviction. There seems to be no question of the power of a court to continue a case subject to call *prior* to an adjudication of guilt and *prior to* actually bringing the defendant on for trial. Such is the common practice in this jurisdiction and it is believed in every jurisdiction cases are continued subject to call prior to trial, pending investigation by the prosecuting officers, investigation by the court, or for other reasons satisfactory to the court, it always being in the power of the defendant to move at any time to have the case brought on for trial. In the instant case there was a very good reason, apparently, for the continuance of the case on December 12, 1921, subject to call, in view of the fact that the defendant, as heretofore stated, had already pled guilty in the Supreme Court of the District of Columbia to a charge of grand larceny and had been remanded for sentence. It was therefore quite natural that the Judge of the Juvenile Court should await the outcome of the action in the Supreme Court before proceeding further with the case. The defendant was sentenced to the penitentiary for a period of two years and when he was free from serving his sentence the Juvenile Court immediately took action to have him brought before

it to dispose of the pending cases; and the record, on page 4, under the entry of July 26th, says: "*After hearing adjudged guilty and sentenced to serve three months in jail.*"

Counsel for appellant states, on pages 2 and 7 of his brief, that the continuance of the cases subject to call was without the consent of the appellant. There is nothing in the record of the proceedings nor in the bill of exceptions showing that this action was without the consent of the appellant or that he made any objection to it in any way. It must therefore be assumed that he was at least quiescent, and that his silence amounted to consent. Although, as before stated, the instant case is not one involving an indefinite continuance for imposition of sentence, yet it has been stated that even in such cases the silence of the defendant at the time of such continuance and his failure to make objection thereto amounts to acquiescence. In *State ex rel. Gehrmann vs. Osborne*, 79 N. J. Eq. Rep., 430, the court made a very thorough review of the authorities on the question of the right of a trial court to indefinitely suspend the imposition of sentence and, after deciding that at common law the court did have such a right, it passed on the question of the effect of the consent or objection of the defendant to such a course and in that connection said (page 445):

"As a general principle, I should say, that, either the successful or the defeated party in any litigated proceeding, civil or criminal, could move for judgment at any time when and after the matter was ripe for judgment.

"But if the defendant acquiesces, *or does not object*, it is difficult to see how he can be said to be injured. It is necessary to remember that the defendant has been convicted; that the court has the power

to inflict the full measure of punishment; that if a defendant, thus in peril of suffering the full penalty of the law, is not visited with it, many things may happen favorable to him; while nothing worse than his present plight can possibly happen. If a defendant thus circumstanced *sees fit not to object*, or to acquiesce, *I do not see who else is concerned that can complain, nor how he can legitimately complain.*

* * * * *

“I am inclined to say—although, of course, not to find, because it is not in issue—that the power thus to indefinitely suspend sentencing, which exists in the court, is not exercisable in the face of an objection by the defendant; that when exercised, *in default of objection*, and with *either implied or actual acquiescence*, it is a *lawful exercise of power residing in the court*, and cannot result in the release of a prisoner subsequently sentenced, and who applies by a writ of *habeas corpus* for that purpose.”

If the defendant had wanted an earlier trial than the state of the record indicated he would apparently get, there was nothing to prevent his asking for it. As was stated in *Phillips vs. U. S.*, 201 Federal, 259-262:

“It is his duty if he wants a speedy trial to ask for it, and we must presume that he would have been granted an earlier trial if he had so asked.”

It would not seem to lie in the mouth of the appellant to stand idly by and permit the court to enter an indefinite continuance of his case and accept the benefit of the possibility of never being brought to trial as a consequence thereof, not making any objection at that time nor any

request for an early trial, to later come in and object to the power of a court to bring him on for trial and make a disposition of the case accordingly. As was said by this court, in *Dowling vs. U. S.*, 41 App. D. C., 11, 18:

"A defendant in a criminal case will not be permitted to lay a trap for the court, and, after the court has become ensnared, claim prejudicial error, because the court did what he requested *or assented to*. The objection came too late."

Respectfully submitted,

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